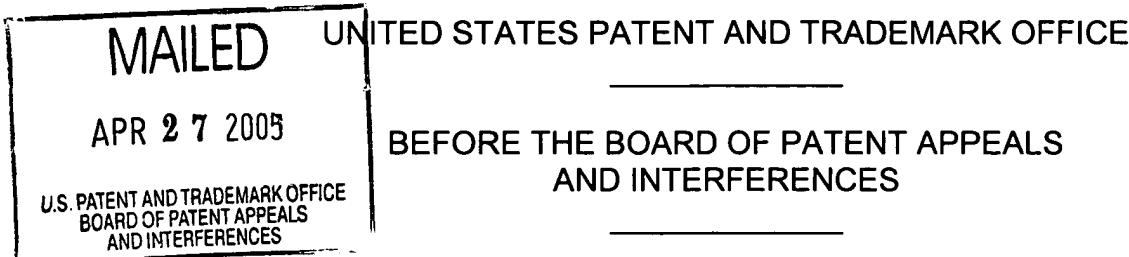


The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.



Ex parte TOSHIO YAGIHASHI and SHUN-ICHI SATO

Appeal No. 2004-2289
Application No. 09/825,337

HEARD: April 21, 2005

Before KRASS, BLANKENSHIP, and NAPPI, **Administrative Patent Judges**.

NAPPI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 15 which constitute all the claims remaining in the application. For the reasons stated *infra* we will not sustain the examiner's rejection of these claims.

THE INVENTION

The invention relates to a system and method to use a sales network in which a web site allows consumers to purchase a specific item from one seller to purchase relevant items from another seller. For example, a purchaser of a portable

electronic device may also buy a case from another seller. See page 1 of appellants' specification.

Claim 1 is representative of the invention and is reproduced below:

1. A commercial sales method via a network, comprising:

a step of registering in advance a specific-item catalogue relating to a specific item and a relevant-item catalogue for items relevant to the specific item in a home page on the WWW;

a step, performed by a purchaser, of viewing both the specific-item catalogue and the relevant-item catalogue on the home-page via the network through a purchaser terminal, and sending a purchase request to a relevant-item seller selling the items relevant to the specific item by designating one of the items relevant to the specific item so as to purchase the designated item;

a step, performed by the relevant-item seller, of delivering a product of the designated item to the purchaser according to the purchase request;

a step, performed by the relevant-item seller, of informing a settlement computer of sales data of the purchased item; and

a step, performed by the settlement computer, of transferring a sales commission from a sales account of the relevant-item seller to a sales account of a specific-item seller selling the specific item, the specific item seller being different from the relevant-item seller,

wherein the specific-item catalogue and the relevant-item catalogue each comprise information about the item in addition to a link.

THE REFERENCES

The references relied upon by the examiner are:

Bezos et al. (Bezos)	6,029,141	Feb. 22, 2000
Tavor et al. (Tavor)	6,070,149	May 30, 2000

THE REJECTIONS AT ISSUE

Claims 1 through 15 stand rejected under 35 U.S.C. § 103 as being obvious over Tavor in view of Bezos. Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellants and the examiner, for the reasons stated *infra*, we will not sustain the examiner's rejection of claims 1 through 15 under 35 U.S.C. § 103.

Appellants assert on page 6 of the brief:

Tavor is directed to a virtual sales representative which guides a purchaser through successive departmental web pages of a single vendor, thus facilitating the purchaser's online shopping experience. Tavor discloses only one vendor and fails to teach or suggest a second vendor (footnote omitted).

On page 7 of the brief, Appellants assert:

Bezos is directed to an internet-based customer referral system, in which links to a vendor's webpage are provided on an "associate's"

webpage. According to Bezos, an “associate” may be, for example, an internet-based product reviewer or a recommendation service. Bezos fails to teach or suggest that the “associate” could be a product-vendor. Like Tavor, Bezos discloses only one vendor.

Further, Appellants argue:

Each of the claims also requires transferring a sales commission from a sales account of one vendor to a sales account of a second vendor. Neither of these features recited in claims 1, 5, 9 and 14 are found in Bezos. As mentioned, each of these features requires and pre-assumes a system including at least two vendors. Bezos specifically discloses that the website of the “associate” is an information dissemination system including marketing information such as product reviews or recommendations.

The examiner in response, on pages 6 and 7 of the answer, states:

Regarding the argument that Tavor et al. fail to disclose all of the features recited by the claims of Group I, the argument is irrelevant, hence spurious, as the same shortcomings alleged by appellant were specifically pointed out in, and addressed by, the rejection. Therefore, the argument merely restates the facts admitted by the rejection, without pointing out any supposed or alleged error in the rejection, thus, should be disregarded.

Regarding the argument that Bezos et al. fail to remedy the deficiencies of Tavor et al. because Bezos et al. disclose only a single “vendor,” since the second entity they disclose is characterized by them as an “associate” rather than literally/explicitly as a second “vendor,” Bezos et al. indeed disclose a first vendor and a second vendor... Inasmuch as an “associate” is commonly defined and accepted to mean a *person united with another or others in an act, an enterprise, or a business*, and, as admitted by appellant, the first entity/vendor of Bezos et al. is indeed engaged in the act of selling, any “associate” of that vendor is then, by definition, united with the first entity/vendor in that act of selling. Therefore, the “associate” is a second entity engaged in the act of selling, hence, a second vendor. (emphasis original, citations omitted).

We disagree with the examiner’s rationale. Claim 9 includes the limitations of “relevant-item catalogue information relating to an item relevant to the specific item;”

“a purchaser terminal configured to enable a user to view both the specific-item catalogue information and the relevant-item catalogue information on the homepage, and to send a purchase request to a relevant-item seller module by designating the item relevant to the specific item so as to purchase the designated item” and “wherein the specific item is sold by the specific-item seller module, and the relevant-item seller module is different from the specific-item seller module.” Independent claims 1, 5 and 14 contain similar limitations. Thus, we find that the scope of the independent claims includes the limitations that the specific-item seller sells the specific item and the relevant item is sold by a different seller. We disagree with the appellants’ statement, on page 7 of the brief, that Bezos fails to teach that the “associate” could be a product vendor. We find that Bezos does teach that the “associate” sells items in that the associate presents items for sale on the associate’s website. See, for example, figure 10A which depicts a sample of an associate’s website. However, we do not find that Bezos teaches that the specific item is sold by one seller and the relevant item is sold by another seller. We find that Bezos teaches that the items sold by the associate are all routed through a single merchant, however, we find no disclosure that the items sold by the associate can be routed through more than one merchant or that the associate acts as the merchant for some of the items sold. Thus, we find that the combination of Tavor and Bezos does not teach all of the limitations of independent claims 1, 5, 9 and 14. Accordingly, we will not sustain the examiner’s rejection of claims 1-15.

Appeal No. 2004-2289
Application No. 09/825,337

CONCLUSION

We will not sustain the examiner's rejection of claims 1 through 15 under 35 U.S.C. § 103.

REVERSED



ERROL A. KRASS

Administrative Patent Judge



HOWARD B. BLANKENSHIP

Administrative Patent Judge



ROBERT E. NAPPI

Administrative Patent Judge

)
)
)
)
)
)
BOARD OF PATENT
APPEALS AND
INTERFERENCES
)
)
)
)
)
)

REN:clm

Appeal No. 2004-2289
Application No. 09/825,337

Sughrue, Mion, Zinn, MacPeak & Seas
2100 Pennsylvania Ave., N.W.
Washington, DC 20037-3202